

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
300 CAPITOL MALL, 17TH FLOOR
SACRAMENTO, CALIFORNIA 95814

APPROVED TEXT OF REGULATION
~~45 FREMONT STREET, 21ST FLOOR~~
~~SAN FRANCISCO, CALIFORNIA 94105~~

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CALIFORNIA CODE OF REGULATIONS, TITLE 10.5
CHAPTER 5, SUBCHAPTER 1

ADOPT Article 4.5 ~~ARTICLE X~~ TO READ:

~~ARTICLE X~~ Article 4.5 PROCEDURES GOVERNING PERSONS SUBJECT TO
TITLE 18 UNITED STATES CODE SECTION 1033

SECTION 2175 PROCEDURES GOVERNING PROHIBITED PERSONS

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SECTION 2175 PROCEDURES GOVERNING PROHIBITED PERSONS

Section 2175.1 Purpose

The purpose of these regulations is to implement the provisions of Title 18 United States Code sections 1033 “(the Act)”, as well as California Insurance Code sections 1723 and 1742.2.

NOTE: Authority cited: 1723 and 1742.2 of the California Insurance Code.
Reference: 1723 and 1742.2 of the California Insurance Code and 18 U.S.C §1033.

Penalties

Section 2175.2 Definitions

For the purpose of these regulations, the following definitions shall apply:

- (a) “Application” shall mean any filing made with the California Department of Insurance (Department) for written consent to engage in the business of insurance.
- (b) “Applicant” shall mean any person subject to the provisions of Title 18 United States Code §1033 , who files an application for written consent to engage in the business of insurance.

~~(b)(c)~~ “Breach of Trust” refers to certain crimes or offenses, including, but not limited to, any offense constituting or involving misuse, misapplication or misappropriation of (1) anything of value held as a fiduciary (including, but not limited to, a trustee, administrator, executor, conservator, receiver, guardian, agent, employee, partner, officer, director or public servant) or (2) anything of value of any public, private or charitable ~~organization~~ entity.

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(d) *“Burden of Proof” means the necessity or duty of proving a fact that is in dispute on an issue raised at a hearing on a Request for Written Consent.*

~~(c)~~(e) *“Business of Insurance” means: (1) the writing of insurance, or (2) the reinsuring of risks, by an insurer, including all acts necessary or incidental to such writing or reinsurance and the activities of persons who act as, or are, officers, directors, agents, or employees of insurers or who are other persons authorized to act on behalf of such persons.*

(f) *“Conviction” means a finding of guilty or a plea of guilty, nolo contendere or no contest in a criminal court of the United States of America or in any state, commonwealth or possession. Completion of deferred adjudication and conditional discharges are not convictions.*

~~(d)~~(g) *“Dishonesty” refers to a crime or offense which includes, but is not limited to, any offense constituting or involving perjury, bribery, forgery, counterfeiting, false or misleading oral or written statements, deception, fraud, schemes or artifices to deceive or defraud, material misrepresentations and the failure to disclose material facts.*

(h) *“Felony” means*

- (1) *Any Federal crime for which the maximum authorized punishment exceeds one year of imprisonment;*
- (2) *Any crime for which the maximum authorized punishment exceeds one year incarceration; or*
- (3) *Any crime in any other state, commonwealth, territory or possession that is identified as a felony in that state, commonwealth, territory or possession, or if not identified as a felony in said other jurisdiction, any offense for which the maximum authorized punishment exceeds one year incarceration.*
- (4) *Any conviction of a felony crime of dishonesty, breach of trust or violation of 18 U.S.C. § 1033 which has been set aside pursuant to California Penal Code section 1203.4.*

~~(e)~~(i) *“Insurer” means any entity that transacts the business of insurance or that reinsures risks, and includes any person who acts as, is, an officer, director, agent or employee of that business.*

~~(f)~~(j) *“Interstate Commerce,” means the following:*

- (1) *Commerce within the District of Columbia, or any territory, or possession of the United States;*
- (2) *All commerce between any point in the State, territory,*

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possession, or the District of Columbia and any point outside thereof;

- (3) All commerce between points within the same State through any place outside such State via the Internet or any other means to receive commerce; or
- (4) All other commerce over which the United States has Jurisdiction.

~~f)(g)~~(k) "License" means any license, registration, certificate of authority or other permit or approval issued or granted by the Commissioner of Insurance.

(l) "Licensee" means any person or entity holding a license.

(m) "Prohibited Person" means any and all persons who have has been convicted of felony crimes of dishonesty, breach of trust in a state or federal jurisdiction or who has been convicted of any violation of 18 U.S.C. §1033 (the "Act"), who wish es to engage in or transact the business of insurance in this State, or who wish es to engage in or transact the business of insurance for insurers, and/or reinsurers and/or their agents and employees who are domiciled in this State. A "Prohibited Person" may be an officer, director or employee of an insurance agency or an insurance company, an agent, solicitor, broker, consultant, third-party administrator, managing general agent, or subcontractor representing an insurance agency or insurance company who engages in or transacts the business of insurance.

~~f)(j)~~(n) "Request for Consent" means a completed application, submitted by a Prohibited Person that, which requests the Commissioner's express, written consent to, which will allow that Prohibited Person to engage in or transact, or to continue to engage in or transact, the business of Insurance.

~~f)(j)~~(o) "State" for the purposes of this regulation, includes any State in the United States the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa and the Trust Territory of the Pacific Islands.

NOTE: Authority cited: 1723 and 1742.2 of the California Insurance Code
Reference: 1723 and 1742.2 of the California Insurance Code and 18 U.S.C §1033.

Section 2175.3 Who Must Comply

Any and all Prohibited Persons who are currently transacting, or engaging in, the business of insurance, or who intend to transact, or engage in, the business of insurance, must submit a completed Request for Consent to the California Department of Insurance (Department).

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*NOTE: Authority cited: 1723 and 1742.2 of the California Insurance Code.
Reference: 1723 and 1742.2 of the California Insurance Code and 18 U.S.C §1033.*

Section 2175.4 Prohibited Persons Currently Engaged in or Transacting the Business of Insurance

- (a) There are no provisions in the Act or these regulations that exempt or except any Prohibited Person, who is currently engaging in, or transacting, the business of insurance from compliance with the Act and these regulations. The Act and these regulations expressly apply to all persons currently licensed who have been convicted of any criminal felony involving dishonesty, breach of trust or any violation of the Act.*
- (b) Any and all currently licensed individuals who are subject to the Act and who were granted a license by the Department following full and complete disclosure of their criminal history shall be deemed to have the Insurance Commissioner's temporary consent to engage in or transact the business of insurance within the scope of their license authority only if the currently licensed individual submits an application for written consent within ninety (90) days from the effective date of these regulations. Any current licensee who is a Prohibited Person and who fails to submit an application for Written Consent within the ninety (90) day period will be barred from transacting the business of insurance as set forth in Title 18 USC section 1033.*
- (c) Any and all Prohibited Persons engaging in, or transacting, the business of insurance, without the express Written Consent of the Commissioner, are in violation of the Act and risk federal criminal sanctions.*

*NOTE: Authority cited: 1723 and 1742.2 of the California Insurance Code
Reference: 1723 and 1742.2 of the California Insurance Code and 18 U.S.C §1033.*

Section 2175.5. Responsibility of Insurers and Other Employers to Identify Prohibited Persons

- (a) It is the responsibility of insurers and of any other employer engaging in, or transacting the business of insurance to make a diligent effort to identify Prohibited Persons and to ensure that Prohibited Persons are not engaging in, or transacting, the business of insurance in violation of the Act and of these regulations. Insurers and other employers must actively seek to determine whether or not Prohibited Persons are in their employ and are engaging in or transacting the business of insurance.*
- (b) The existence of a ~~an existing~~valid license for a Prohibited Person does not*

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waive, excuse, except or exempt an insurer or other employer from its responsibility under subdivision (a) nor the insurer's or other employer's ultimate responsibility for compliance with the provisions of the Act and these regulations.

- (c) *An insurer or employer must notify the Department of Insurance, in writing, of any Prohibited Person who is engaged in the business of insurance without Written Consent.*

NOTE: Authority cited: 1723 and 1742.2 of the California Insurance Code
Reference: 1723 and 1742.2 of the California Insurance Code and 18 U.S.C §1033.

Section 2175.10. Requirements for Character References

Character references may be submitted to the Department for the Commissioner's consideration. Character references shall state how long and in what capacity the person making the reference has known the applicant. References shall also expressly state that the person providing the reference is aware that the reference is being provided in connection with a Request for Written Consent to engage in or transact the business of insurance despite the existence of a relevant felony criminal conviction.

NOTE: Authority cited: 1723 and 1742.2 of the California Insurance Code
Reference: 1723, 1727 and 1742.2 of the California Insurance Code.

**SECTION 2176 DENIAL, EXPIRATION OR TERMINATION OF WRITTEN
CONSENT**

Section 2176.1. Effect of False or Misleading Statements

- (a) *Any Written Consent granted by the Commissioner shall be conditioned upon the truth and veracity of the documents and information submitted by or on behalf of the Prohibited Person making the Request for Written Consent. In the event that the Department determines that the Prohibited Person receiving the Written Consent, or their representative, has made materially false or misleading statements, or has failed to disclose material information, the Written Consent shall be void ab initio.*
- (b) *If the Department determines that a Prohibited Person has violated the terms of Written Consent in any way, the consent shall terminate immediately.*

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- (c) *Knowingly and willfully providing false information to the Department for any purpose constitutes a violation of the Act and is grounds for immediate, summary revocation of ~~a~~ any license issued by the Department.*

NOTE: Authority cited: 1723 and 1742.2 of the California Insurance Code.

Reference: 1723 and 1742.2 of the California Insurance Code and 18 U.S.C §1033.

Section 2176.2 Written Consent Effective for Specified Positions and Responsibilities Only

Any Written ~~Consent~~requests issued by the Commissioner shall be for ~~job responsibility specific and conditioned upon~~ the Prohibited Person remaining in the same or similar job position with the same responsibilities as attested to in the initial Request for Written Consent. The Written Consent will contain a reference to Title 18 U.S.C. 1033(e)(1)(B)(2). A change in job responsibilities requires the Prohibited Person to file ~~a new or~~ an amended Request for Written Consent. Failure to amend an application for Written Consent upon any change in job responsibilities will result in immediate termination of Written Consent.

NOTE: Authority cited: 1723 and 1742.2 of the California Insurance Code.

Reference: 1723 and 1742.2 of the California Insurance Code and 18 U.S.C §1033.

Section 2176.3 Temporary Written Consent

- (a) *The Commissioner has the discretion to grant a temporary Written Consent that will expire at a time certain.*
- (b) *Upon the expiration of a temporary Written Consent, the Prohibited Person is in violation of the Act if the Prohibited Person is engaging in or transacting the business of insurance without first receiving a new, express, Written Consent from the Commissioner.*

NOTE:..Authority cited: 1723 and 1742.2 of the California Insurance Code

Reference: 1065.3, 1669 and 1742.2 of the California Insurance Code.

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Section 2176.4 Subsequent Convictions of Prohibited Persons Previously Granted Written Consent

Any Prohibited Person given a Written Consent to participate in the business of insurance shall immediately notify the Department if the Prohibited Person is subsequently convicted of an offense under 18 U.S.C. §1033, or any felony offense involving dishonesty or breach of trust making them once again subject to the provisions of 18 U.S.C. §1033 and these regulations. The consent previously issued is terminated automatically upon arrest or conviction for the subsequent offense. Immediately upon notification that consent has been terminated, the Prohibited Person must return the original Written Consent and all copies to the Department.

NOTE: Authority cited: 1723 and 1742.2 of the California Insurance Code.
Reference: 1065.3, 1669 and 1742.2 of the California Insurance Code.

SECTION 2177 HEARINGS PROCEDURE

~~Administrative law judges appointed by the Commissioner shall provide over all hearings conducted by the CDI pursuant to Requests for Consent by Prohibited Persons. The hearings shall be conducted in accordance with the Administrative Procedures Act. Per Andrea's comments: This section needs to include when a hearing is available, how to ask for a hearing, timeline for hearings, filing requirements, CDI's response, subpoena's – as per the Administrative Procedure Act, Chapter 4.5. Andrea suggested that she and Natasha Ray work on this section of the regulation.~~

~~NOTE: Authority cited: SEC. 1, 5 and 6 of Senate Bill 941, Chapter 782, Statutes of 1999. Reference: 1065.3, 1738 and 1742.2 of the California Insurance Code.~~

Section 2177.1 Time Limit in Which to Request a Hearing

Applicants who have received a Notice of Denial of Consent may request a hearing, in writing, within sixty (60) calendar days after the issue date of the Notice.

NOTE: Authority cited: 1723 and 1742.2 of the California Insurance Code.
Reference: 1723 and 1742.2 of the California Insurance Code and 18 U.S.C §1033.

Section 2177.2 Form of Request for Hearing and Information Required

A Request for Hearing shall be in writing and must include:

- (a) The name, address, telephone number, and fax number of the Prohibited Person;
- (b) The name, address, telephone number, and fax number of the Prohibited Person's representative, if any;

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- (c) A statement explaining why the Prohibited Person should not be denied the Commissioner's Written Consent;
- (d) A copy of the Commissioner's Denial of Consent;
- (e) Copies of any additional documents that were not included in the Prohibited Person's initial Application, which support the Prohibited Person's explanatory statement and upon which the Prohibited Person intends to rely at the hearing.

NOTE: Authority cited: 1723 and 1742.2 of the California Insurance Code.

Reference: 1723 and 1742.2 of the California Insurance Code and 18 U.S.C §1033.

Section 2177.3 Filing and Service Requirements

- (a) An original and one copy of the Request for Hearing and all documents provided must be sent to the California Department of Insurance, Administrative Hearing Bureau, 45 Fremont Street, San Francisco, California 94105.
- (b) All required documents and copies must be delivered to the Administrative Hearing Bureau either by personal delivery or U.S. Postal Service Return Receipt Requested delivery.

NOTE: Authority cited: 1723 and 1742.2 of the California Insurance Code.

Reference: 1723 and 1742.2 of the California Insurance Code and 18 U.S.C §1033.

Section 2177.4 Time of Hearing

The Chief Administrative Law Judge of the Administrative Hearing Bureau shall assign the case to an Administrative Law Judge for hearing. An administrative law judge shall hold a hearing within sixty (60) days of the Administrative Hearing Bureau's receipt of the Department's response to the Request for Hearing. The hearing may be held on a later date upon agreement of both parties. The Administrative Law Judge shall give the parties not less than 10 days written notice of the date on which a hearing is scheduled.

NOTE: Authority cited: 1723 and 1742.2 of the California Insurance Code.

Reference: 1723 and 1742.2 of the California Insurance Code and 18 U.S.C §1033.

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Section 2177.5 Continuances; Good Cause

- (a) A continuance for any act occurring under this article may be granted by the Chief Administrative Law Judge or the Administrative Law Judge for good cause shown.
- (b) When seeking a continuance, a party shall apply for the continuance within five (5) business days following the time the party discovered or reasonably should have discovered the event or occurrence which establishes the good cause for the continuance. A continuance may be granted for good cause after the five (5) business days have lapsed, if the party seeking the continuance is not responsible for, or has made a good faith effort to prevent, the condition or event establishing the good cause.

NOTE: Authority cited: 1723 and 1742.2 of the California Insurance Code.

Reference: 1723 and 1742.2 of the California Insurance Code and 18 U.S.C §1033.

Section 2177.6 Role of Department of Insurance

The Department of Insurance is a party in the hearing, representing the Commissioner. Within 20 days of notification by the Administrative Hearing Bureau of the request for hearing, the Department shall file an original and one copy of its response to the underlying issues raised by the Prohibited Person in the Request as well as an original and one copy of any documents upon which he or she plans to rely at the hearing. Copies of the Department's response and any documents filed with the Administrative Hearing Bureau shall also be served on the Prohibited Person and/or their representative, if any.

NOTE: Authority cited: 1723 and 1742.2 of the California Insurance Code.

Reference: 1723 and 1742.2 of the California Insurance Code and 18 U.S.C §1033.

Section 2177.7 Representation of Prohibited Person at the Hearing

A Prohibited Person may be represented in the proceedings before the Administrative Hearing Bureau. A representative is not required and the representative need not be an attorney.

NOTE: Authority cited: 1723 and 1742.2 of the California Insurance Code.

Reference: 1723 and 1742.2 of the California Insurance Code and 18 U.S.C §1033.

Section 2177.8 Administrative Law Judge's Authority

- (a) Article 10 of Chapter 4.5 of the Administrative Procedure Act (commencing

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with Government Code section 11445.10 and concerning enforcement of subpoenas and sanctions), is adopted, and is applicable to these proceedings. The Administrative Law Judge may exercise all the authority granted pursuant to Chapter 4.5 of the Administrative Procedure Act.

NOTE: Authority cited: 1723 and 1742.2 of the California Insurance Code.
Reference: 1723 and 1742.2 of the California Insurance Code and 18 U.S.C §1033.

- (b) The Administrative Law Judge may take any other action necessary or appropriate to the discharge of his or her duties, consistent with the statutory or other authority under which the Commissioner functions. The Administrative Law Judge may issue such orders compelling the compliance of the parties and other persons subject to the jurisdiction of the Commissioner as necessary to the discharge of his or her official duties and the efficient use of the Department's judicial time and resources.
- (c) The Chief Administrative Law Judge shall exercise all authority set forth in this section until a proceeding is assigned to an Administrative Law Judge.

NOTE: Authority cited: 1723 and 1742.2 of the California Insurance Code.
Reference: 1723 and 1742.2 of the California Insurance Code and 18 U.S.C §1033.

Section 2177.9. Burden of Proof

The burden of proof at a hearing on a Request for Written Consent is on the Prohibited Person seeking the Commissioner's Written Consent to engage in or transact the business of insurance in this State.

NOTE: Authority cited: 1723 and 1742.2 of the California Insurance Code
Reference: 1723, 1727 and 1742.2 of the California Insurance Code.

Section 2177.10 Evidence

- (a) The hearing need not be conducted according to technical rules relating to evidence and witnesses, except as hereinafter provided. Any relevant evidence shall be admitted if it is evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of evidence over objection in civil actions.
- (b) The rules of privilege shall be effective to the extent that they are otherwise required by law to be recognized at the hearing.

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- (c) The Administrative Law Judge has the sole discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time.
- (d) No documentary evidence will be admitted into evidence at the hearing that was not previously exchanged between the parties without good cause shown why the evidence was not available to the parties for exchange prior to the hearing.

NOTE: Authority cited: 1723 and 1742.2 of the California Insurance Code.

Reference: 1723 and 1742.2 of the California Insurance Code and 18 U.S.C §1033.

Section 2177.11. Additional Evidence or Briefing

- (a) The Administrative Law Judge may require the production of further evidence or briefing on any issue. If the administrative law judge determines that specific evidence or briefing is necessary as a part of the record, he or she shall set a deadline for the parties to file the requested evidence or briefing.
- (c) Unless ordered by the Administrative Law Judge, or upon written motion for good cause shown, no additional evidence shall be introduced after the close of the evidentiary hearing.

NOTE: Authority cited: 1723 and 1742.2 of the California Insurance Code.

Reference: 1723 and 1742.2 of the California Insurance Code and 18 U.S.C §1033.

Section 2177.12 Official Notice

In reaching a decision, official notice may be taken, before submission of the case for decision, of any fact that may be judicially noticed by the courts of this state. All parties shall be informed of the matters to be noticed, and those matters shall be noted in the record, referred to therein, or appended thereto. Pursuant to a written request, all parties shall be given a reasonable opportunity to refute the officially noticed matters, either by evidence or by written or oral presentation to the Administrative Law Judge.

NOTE: Authority cited: 1723 and 1742.2 of the California Insurance Code.

Reference: 1723 and 1742.2 of the California Insurance Code and 18 U.S.C §1033.

Section 2177.13 Hearing Reporter

The proceedings at the hearing shall be reported by a hearing reporter. However, upon the consent and agreement of all parties, the proceedings may be reported electronically. Parties must make their own arrangements for payment with the hearing reporter if they wish to obtain a copy of the reporter's transcript.

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NOTE: Authority cited: 1723 and 1742.2 of the California Insurance Code.
Reference: 1723 and 1742.2 of the California Insurance Code and 18 U.S.C §1033.

~~SECTION XXXX. Costs~~

~~The prohibited person will pay all costs associated with this proceeding, including but not limited to, the court reporter for the Departmental hearings and/or meetings concerning his application. [Per Andrea's comments: Possible deletion of this section if authority is not stated in SB 941.]~~

Section 2177.14 Costs

All parties shall bear their own costs.

NOTE: Authority cited: 1723 and 1742.2 of the California Insurance Code.
Reference: 1723 and 1742.2 of the California Insurance Code and 18 U.S.C §1033.

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